

Tran (Migration) [2018] AATA 893 (7 March 2018)

CORRIGENDUM

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Van Tan Tran
CASE NUMBER:	1721015
DIBP REFERENCE(S):	BCC2017/1616683
MEMBER:	Russell Matheson
DATE OF DECISION:	7 March 2018
DATE CORRIGENDUM SIGNED:	6 April 2018
PLACE OF DECISION:	Sydney
AMENDMENT:	The following corrections are made to the decision:

The date of decision is 7 March 2018.

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mr Van Tan Tran

CASE NUMBER: 1721015

DIBP REFERENCE(S): BCC2017/1616683

MEMBER: Russell Matheson

DATE: March 2017

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 07 March 2018 at 12:53pm

CATCHWORDS

Migration – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner (Temporary)) – Granted a Bridging visa – Applicant breached bridging visa conditions – Travelled to Vietnam – Compelling reasons – Child of the marriage – Sponsor relies on the review applicant for support – Emotional hardship – Sponsor can temporarily reside with the applicant as a family unit offshore

LEGISLATION

Migration Act 1958, s 65

Migration Regulations 1994, Schedule 2 cl 820.211 Schedule 3 Criteria 3001, 3003, 3004

CASES

Babicci v MIMA (2005) 141 FCR 285

MZYPZ v MIAC [2012] FCA 478

Waensila v MIBP [2016] FCAFC 32

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision of a delegate of the Minister for Immigration on 25 August 2017 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant is a national of Vietnam, born 9 December 1991. He applied for the visa on 5 May 2017 on the basis of his relationship with his sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211 because the delegate was not satisfied the applicant met criteria 3001 of Schedule 3. The applicant seeks review of the delegate's decision.
4. The applicant appeared before the Tribunal on 7 February 2017 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor Ms Le. It should be noted that both the applicant and sponsor gave their evidence via telephone as they were in Vietnam at the time the hearing was conducted. The Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages.
5. The applicant was represented in relation to the review by his registered migration agent.
6. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

7. *Background*

8. The applicant arrived in Australia on 15 November 2012, on a subclass TU-573 visa which was cancelled on 30 June 2014. The applicant was located by the Department of Immigration and Border Protection on 8 July 2014 and was granted a Bridging Visa E on the grounds that he had the opportunity to appeal his cancellation within the specified time frames. The applicant did not appeal his cancellation and instead again became an unlawful non-citizen in Australia from 19 July 2014 until he was granted another Bridging Visa E on 11 May in association with his partner visa application lodged on 5 May 2017. The applicant married the sponsor on 21 April 2017.
9. The applicant departed Australia on 31 January 2018 to visit his parents in Vietnam and is not permitted to return to Australia based on the conditions imposed on his Bridging Visa E.

CONSIDERATION OF CLAIMS AND EVIDENCE

10. The issue in the present case is whether the applicant the applicant meets criteria 3001 of Schedule 3 and whether compelling reasons exist for not applying the Schedule 3 criteria.
11. The Tribunal has before it the Departments file relating to the applicant; its own file; and a copy of the Department's decision provided by the applicant to the Tribunal.

DOES THE APPLICANT MEET SCHEDULE 3 CRITERIA, OR SHOULD THOSE CRITERIA BE WAIVED?

12. An applicant who is not the holder of a substantive visa at the time of application must meet certain criteria in Schedule 3 to the Regulations. With limited exceptions not relevant to this case, he or she must satisfy Schedule 3 criteria 3001, 3003, and 3004 unless the Minister is satisfied that there are compelling reasons for not applying those criteria: cl.820.211(2)(d).
13. It is not in dispute that the applicant in the present case did not have a substantive visa at the time of application. As the applicant did not enter Australia as the holder of a Subclass 995 visa or special purpose visa, the issue in the present case is whether the applicant satisfies the Schedule 3 criteria unless there are compelling reasons for not applying those criteria. These criteria are set out in the attachment to this decision.

CRITERION 3001

14. In order to satisfy criterion 3001, the application for the visa must have been lodged within 28 days of the relevant day. The 'relevant day' is defined in 3001(2), as set out in the attachment to this decision.
15. In order to meet Schedule 3 Criterion 3001, the application must have been validly made within 28 days after the relevant day. For the purpose of this application, the last relevant day is the last day the applicant held a substantive visa. The applicant lodged his application on 5 May 2017 and his last substantive visa was cancelled on 23 June 2014.
16. As the visa application was not made within 28 days of the relevant day, the applicant does not satisfy criterion 3001.

COMPELLING REASONS

17. As the Tribunal has found that the applicant does not meet the relevant Schedule 3 criteria, it is required to consider whether there are compelling reasons for not applying the criteria.
18. The expression 'compelling reasons' is not defined for these purposes. However, the reasons should be sufficiently convincing to move the decision-maker to exercise its discretion to waive the requisite criteria and the circumstances must be sufficiently powerful to lead a decision-maker to make a positive finding in favour of waiving the required criteria: *MZYPZ v MIAC* [2012] FCA 478 at [10]; *Babici v MIMIA* (2005) 141 FCR 285 at [24]. Circumstances which constitute 'compelling reasons' for not applying the Schedule 3 criteria can arise at any time, including after the visa application is made: *Waensila v MIBP* [2016] FCAFC 32.
19. The applicant provided a written submission to the Tribunal addressing the waiver. The applicant presented evidence of his relationship with the sponsor and claims the relationship has lasted for nearly 2 years. In oral evidence the applicant told the Tribunal the relationship commenced in September 2015, further stating that the parties entered into a committed relationship in August 2016. The Tribunal acknowledges the applicant's claims and has considered the various documents he has provided in support of the claim that the relationship is a genuine one. However, the Tribunal makes no assessment as to the nature of the applicant's relationship with the sponsor and has accepted at face value the claims made by the parties that they were and continue to be in a genuine relationship together and the circumstances of that claimed relationship for the purposes of this decision.
20. The criteria in cl.820.211(2)(a) is that the applicant is the spouse or de facto partner of the sponsoring partner. This, in part, requires the applicant and the sponsor to be in a genuine,

continuing and exclusive relationship. If an applicant does not hold a substantive visa and does not meet the Schedule 3 criteria, the requirement in cl.820.211(2)(d)(ii) to provide compelling reasons for not applying those criteria is in addition to the criteria in cl.820.211(2)(a). Accordingly, simply the fact that the parties are in a genuine and continuing relationship is not of itself a compelling reason for not applying the Schedule 3 criteria as it is already a criteria which must be satisfied in order to meet the criteria in cl.820.211(2)(a). If the relationship itself can be considered a compelling reason for not applying the Schedule 3 criteria, it must be the particular aspects of the relationship which must provide a compelling reason for not applying the Schedule 3 criteria and not simply the fact that the parties are in a relationship.

21. Thus, as a genuine spousal relationship is the basic requirement for a partner visa application, the Tribunal is not satisfied that the genuineness, mutual commitment, continuing nature and longevity of the parties' relationship or the parties' temporary separation are on their own or cumulatively are circumstances that should compel the Tribunal to not apply the Schedule 3 criteria. The Tribunal is not satisfied on the evidence that these are compelling reasons not to apply the Schedule 3
22. The Tribunal is mindful that the Explanatory Statement, in providing examples of compelling reasons, states:

Where the applicant and his or her nominator are already in a long-standing relationship which has been in existence for two years or longer... In these circumstances, waiver **may** be justified by the hardship which could result if the Schedule 3 criteria were not waived (Tribunal's emphasis).
23. The explanatory statement and any guidelines produced by the Department do not provide criteria which, if met, satisfy the requirements of the legislation. If the nature of the relationship between the applicant and the sponsor were to be a compelling reason for not applying the Schedule 3 criteria, all the factors of the relationship, including its duration, the level of financial and emotional commitment, the dependence the parties had upon each other and other relevant factors must be considered. As it is made clear in the Explanatory Statement, the examples provided only may justify the waiver of the Schedule 3 criteria. They do not provide a criterion that, if satisfied, becomes a compelling reason for not applying the Schedule 3 criteria and the Explanatory Statement is not part of the statutory text which is to be considered.
24. The Tribunal also acknowledges that the earlier Departmental policy which identified long term relationships as giving rise to compelling reasons but in the Tribunal's view, such policy is more restrictive than, and not consistent with the legislation.
25. In the circumstances of this case, the Tribunal does not consider that the existence of a long term genuine relationship between the applicant and the sponsor, even if one was established, constitutes a compelling reason for the waiver.
26. The applicant in his written submission to the Tribunal through his agent dated 31 January 2018 stated that the applicant and sponsor commenced a serious relationship in August 2016 and were married on 21 April 2017. Further stating that the parties have a child born to the relationship. The applicant produced a birth certificate indicating that the applicant and sponsor as the biological parents to the child Aiden Tran, born on 27 May 2017 at Fairfield Hospital.
27. The applicant requested that the Tribunal waive the Schedule 3 criteria because he is the natural father of the child and the child is an Australian citizen and that he would like this to be considered as a compelling reason. Further stating that the sponsor is a full-time carer and mother for their baby and that she relies upon the applicant emotionally and financially.

The Tribunal accepts that the parties have a child of the relationship; however when considering all the evidence of the relationship the Tribunal is not satisfied that having a child is a compelling reason to waive the Schedule 3 criteria in this case. The Tribunal notes that the sponsor does not work and is currently residing with the applicant at his family home in Vietnam. The sponsor stated that if she had to go to Vietnam with the applicant when he applies for his visa that it would not be good for her child and the hospital environment in Vietnam is not as good as Australia. Further stating that her husband takes their child to hospital in Australia when the child is sick. Although the Tribunal accepts that the health care system in Australia is superior to that in Vietnam and the child may have a better lifestyle in Australia it does not consider that this is a compelling reason to waive the Schedule 3 criteria. The sponsor provided no evidence to the Tribunal that she could not reside with her child in Vietnam with the applicant as a family unit temporarily whilst he applied for a visa application offshore. The Tribunal is of the view the sponsor can temporarily reside with the applicant as a family unit offshore while the applicant applies for his visa.

28. The Tribunal notes that the sponsor has previously travelled to Vietnam from 7 March 2017 to 5 April 2017 when heavily pregnant. The sponsor in evidence said that she had travelled to Vietnam to visit family for this period. The sponsor's movement details show that she departed for Vietnam on 7 January 2018 and has not returned to Australia at this point in time. The sponsor further stated that she was currently in Vietnam and had attended her brother's wedding in the company of her child. The sponsor stated that she was able to travel to Vietnam to visit her family because she was financially supported by her father and two brothers who live in Australia. The sponsor also stated that she resides in Australia with the applicant, her child and two brothers in Canley Heights.
29. The applicant told the Tribunal that he left Australia on 31 January 2018 to visit his parents who were seriously ill and that he also wanted to be with his wife and child who were in Vietnam. The applicant also said that his child was sick with the flu and needed to see a doctor. The applicant provided no probative evidence that supported that his child had in fact been sick or received medical help. The Tribunal on evidence does not consider the child's claimed illness constitutes a compelling reason to waive the Schedule 3 criteria. The applicant stated that he knew the conditions of his Bridging Visa E and that he had done the wrong thing leaving Australia. Further stating that he panicked because his child was also sick in Vietnam at the time and he wished to be with his parents, wife and child. The applicant said that the sponsor had travelled to Vietnam in January 2018 to attend her brother's wedding and then had travelled to his parents place from Tra-Vinh province to meet him and assist with care of his parents over a week ago.
30. The applicant in evidence told the Tribunal that he had been an unlawful non- citizen when his student visa was previously cancelled. The applicant was located by the Department and issued a bridging visa. The applicant said that he did not appeal his student visa cancellation because he was living on his own and did not know what to do. Further stating that he did not know he could re-apply for his visa. The applicant became unlawful again because he did not lodge an appeal within the specified time frames whilst on a bridging visa. The Tribunal may except that the applicant was naive when he initially did not appeal his visa cancellation. The Tribunal is of the view as a result of his non-compliance the applicant would have been informed by the Department after he had been unlawful on two occasions and issued two bridging visas that he had to abide with conditions of his current bridging visa. The Tribunal is of the view the Department would have explained the conditions of the visa to him and any ramifications that would occur if he didn't abide with the conditions of his bridging visa. The Tribunal is not satisfied that the applicant's explanations for his breaches of visa amount to a compelling reason to waive the Schedule 3 criteria.
31. The applicant stated that he believed compelling reasons exist for the waiving of the Schedule 3 criteria because he left Australia to be with his parents who were seriously ill.

Also stating that his father had a stomach ulcer and his mother suffered from arthritis. The applicant said that his younger brother who also resides in Vietnam near his parents was unable to support his parents because he was married and was too busy working and had no spare time. The applicant said that he would ask his brother to look after his parents at a later date and that it was critical for him to be there at present to look after his parents. The applicants sponsor (wife) was present in Vietnam having departed Australia on 7 January 2018 at the time the applicant made a decision to depart Australia on 31 January 2018, to visit his parents. The Tribunal is of the view that applicants sponsor who was in Vietnam and does not work had the capacity to help care and support the applicant's parents while in Vietnam, thus allowing the applicant to stay in Australia to pursue the outcome of his visa application on appeal at the AAT on 7 February 2018.

32. The applicant said that his mother had arthritis for a number of years and her joints are swollen at the present time because it is cold and she cannot walk or move around freely and that she cannot care for his father. The applicant said that his mother does not suffer from arthritis all the time and other years she has been ok.
33. The applicant said that he had been away from his parents for the past 5 years and they were stressed. The applicant stated that he supports his mother with her illness by providing moral and emotional support because she has not seen him for 5 years. Also stating that his father continually vomits because of his stomach ulcer and does not eat and that when his father sees him he feels better mentally and that seeing him (the applicant) helps with the symptoms.
34. On evidence the Tribunal is not satisfied that compelling reasons exist for the Tribunal to waive the Schedule 3 criteria because the applicant provides moral and emotional support to his parents in Vietnam. The Tribunal may accept that the applicant's presence in Vietnam provides moral and emotional support to his parents but the Tribunal is not convinced on evidence that this is a compelling reason to waive the Schedule 3 criteria. The Tribunal is of the view the applicant has returned to visit his parents because they miss each other. The applicant said that he was aware that his Bridging Visa E conditions prevented him from returning to Australia.
35. The applicant also stated that compelling reasons exist because the health system is better in Australia than Vietnam and that he wants to raise and educate his child who is an Australian citizen in Australia. The Tribunal accepts that the health system is better in Australia. The Tribunal notes that applicant in evidence stated that he was able to access medical treatment for his child in Vietnam when required due to illness. The Tribunal is of the view the applicant can easily access the health system for his family in Vietnam when required. As previously stated the Tribunal accepts that the standard of the health system in Australia is superior to that in Vietnam. The applicant further stated that he would suffer financial hardship because he could not afford to purchase tickets for the sponsor and his child to visit him in Vietnam if he had had to apply for a visa offshore. He also said that he could not afford to apply for a visa offshore and needs to work in Australia to pay for his accommodation. The applicant said that he was previously working as a tiler earning \$600 week to support his wife and child and the sponsor was receiving benefits to look after the baby.
36. The Tribunal accepts that it is reasonable to expect a level of emotional hardship to be experienced if the applicant is separated from his wife and child for any extended period of time. The Tribunal acknowledges that this is a common experience for other people who apply to migrate to Australia from offshore. On the basis of their relationship with an Australian citizen or permanent resident. The Tribunal accepts that emotional hardship can be considered a compelling factor in considering the Schedule 3 criteria but the Tribunal is not satisfied that the evidence presented by the applicant and the sponsor is sufficient to

substantiate the severity of any emotional hardship would be any different to other couples that are separated when applying for a visa offshore. On evidence presented by the sponsor she is able to travel to Vietnam for extended periods of time to visit her family with the financial support of her family here in Australia. The Tribunal accepts that it would be a financial burden for the applicant to fund return trips to Vietnam. The applicant's evidence is that she has been financially supported by her father and brothers to visit Vietnam previously to visit family and friends and to attend her brother's wedding with her child. There is no evidence before the Tribunal that her family would not continue to support her.

37. The applicant's evidence is that he entered into a relationship with the sponsor when his visa was cancelled and he was an unlawful citizen. The applicant stated that he has not manipulated the circumstances of his relationship by entering into a partner relationship with the sponsor to give compelling reasons for the grant of a visa. The Tribunal is of the view that when considering the applicants migration history, that he has a poor migration history and he flagrantly disregards the conditions of his previous visas. The applicant stated that he knows that he has done the wrong thing by not abiding with his Bridging Visa E conditions and knew he was unable to travel overseas. The Tribunal does not consider that the fact that you do not abide by the conditions outlined in your visas is a compelling reason to waive the Schedule 3 criteria.
38. At the conclusion of the hearing the applicant's migration agent submitted that compelling reasons exist for not applying the Schedule 3 criteria because the parties have a common child who is an Australian citizen and there would be financial hardship because the applicant is the sole income earner and that the applicant could not afford to pay the substantial fee that would be incurred when applying for a partner visa offshore. Further stating that compelling circumstances exist because the applicant's parents are seriously ill.
39. The Tribunal when considering the submission from the applicant's migration agent accepts that the parties are married and there is a child born of the relationship who is an Australian citizen. When considering whether there would be financial hardship the applicant presented no reasons as to why the applicant could not remain and work in Vietnam and support his wife, child and parents whilst applying for his visa offshore. The applicant other than oral evidence provided little evidence as to the seriousness of his parent's illness or any care that may be required. The Tribunal may accept that the applicants parents both need some care but it is not of the view the illnesses described by the applicant are immediately life threatening. The Tribunal is not satisfied that the applicant's parent's claimed illness is a compelling reason to waive the Schedule 3 criteria. On evidence the sponsor has the financial support of her family in Australia and also has family in Vietnam and she is able to travel to Vietnam with her child for extended periods of time. As previously stated the evidence given by the sponsor is that she has previously been funded by her father and brothers to travel to Vietnam for extended periods of time to visit family and friends. The Tribunal is of the view that the sponsor can be financially supported by her family during temporary separation from the applicant whilst he applies for his visa offshore.
40. The Tribunal is of the view when the applicant remained in Australia as an unlawful non-citizen and the applicant has attempted manipulate his circumstances by delaying his departure from Australia so that he could enter into a partner relationship. The applicant conducted the entirety of his relationship with the sponsor as an unlawful non-citizen in Australia after failing to comply with the conditions of his previous visa.
41. As previously stated the Tribunal is not satisfied after considering all the circumstances that having a child born to the relationship is a compelling reason to waive the Schedule 3 criteria in this case. The Tribunal notes that the sponsor does not work and is currently residing with the applicant at his family home in Vietnam. The sponsor provided no evidence to the Tribunal that she could not reside with her child in Vietnam with the applicant as a family unit

temporarily whilst he applied for a visa application offshore. The Tribunal is of the view the sponsor can temporarily reside with the applicant as a family unit offshore while the applicant applies for his visa.

42. Considering all the circumstances of the relationship and the reasons provided by the applicant and sponsor, the Tribunal is not satisfied that compelling reasons exist for the waiver of the Schedule 3 Criteria.
43. The Tribunal is not satisfied that there are compelling reasons for not applying the Schedule 3 criteria. Accordingly, the applicant does not meet cl.820.211(2)(d)(ii).
44. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

45. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Russell Matheson
Member

ATTACHMENT - EXTRACT FROM MIGRATION REGULATIONS 1994

SCHEDULE 3

3001

- (1) The application is validly made within 28 days after the relevant day (within the meaning of subclause (2)).
- (2) For the purposes of subclause (1) and of clause 3002, the relevant day, in relation to an applicant, is:
 - (a) if the applicant held an entry permit that was valid up to and including 31 August 1994 but has not subsequently been the holder of a substantive visa — 1 September 1994; or
 - (b) if the applicant became an illegal entrant before 1 September 1994 (whether or not clause 6002 in Schedule 6 of the Migration (1993) Regulations applied or section 195 of the Act applies) and has not, at any time on or after 1 September 1994, been the holder of a substantive visa — the day when the applicant last became an illegal entrant; or
 - (c) if the applicant:
 - (i) ceased to hold a substantive or criminal justice visa on or after 1 September 1994; or
 - (ii) entered Australia unlawfully on or after 1 September 1994;whichever is the later of:
 - (iii) the last day when the applicant held a substantive or criminal justice visa; or
 - (iv) the day when the applicant last entered Australia unlawfully; or
 - (d) if the last substantive visa held by the applicant was cancelled, and the Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation — the later of:
 - (i) the day when that last substantive visa ceased to be in effect; and
 - (ii) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision.

3003

If:

- (a) the applicant has not, on or after 1 September 1994, been the holder of a substantive visa; and
- (b) on 31 August 1994, the applicant was either:
 - (i) an illegal entrant; or
 - (ii) the holder of an entry permit that was not valid beyond 31 August 1994;

the Minister is satisfied that:

- (c) the applicant last became an illegal entrant, or, in the case of a person referred to in subparagraph (b)(ii), last became a person in Australia without a substantive visa, because of factors beyond the applicant's control; and
- (d) there are compelling reasons for granting the visa; and
- (e) the applicant has complied substantially with the conditions that apply or applied to:
 - (i) the last of any entry permits held by the applicant (other than a condition of which the applicant was in breach solely because of the expiry of the entry permit); and
 - (ii) any subsequent bridging visa; and
- (f) the applicant would have been entitled to be granted an entry permit equivalent to a visa of the class applied for if the applicant had applied for the entry permit immediately before last becoming an illegal entrant or, in the case of a person referred to in subparagraph (b)(ii), if the applicant had applied for the entry permit on 31 August 1994; and
- (g) the applicant intends to comply with any conditions subject to which the visa is granted; and
- (h) the last entry permit (if any) held by the applicant was not granted subject to a condition that the holder would not, after entering Australia, be entitled to be granted an entry permit, or a further entry permit, while the holder remained in Australia.

If the applicant:

- (a) ceased to hold a substantive or criminal justice visa on or after 1 September 1994; or
- (b) entered Australia unlawfully on or after 1 September 1994 and has not subsequently been granted a substantive visa;

the Minister is satisfied that:

- (c) the applicant is not the holder of a substantive visa because of factors beyond the applicant's control; and
- (d) there are compelling reasons for granting the visa; and
- (e) the applicant has complied substantially with:
 - (i) the conditions that apply or applied to:
 - (A) the last of any entry permits held by the applicant (other than a condition of which the applicant was in breach solely because of the expiry of the entry permit); and
 - (B) any subsequent bridging visa; or
 - (ii) the conditions that apply or applied to:
 - (A) the last of any substantive visas held by the applicant (other than a condition of which the applicant was in breach solely because the visa ceased to be in effect); and
 - (B) any subsequent bridging visa; and
- (f) either:
 - (i) in the case of an applicant referred to in paragraph (a) — the applicant would have been entitled to be granted a visa of the class applied for if the applicant had applied for the visa on the day when the applicant last held a substantive or criminal justice visa; or
 - (ii) in the case of an applicant referred to in paragraph (b) — the applicant would have satisfied the criteria (other than any Schedule 3 criteria) for the grant of a visa of the class applied for on the day when the applicant last entered Australia unlawfully; and
- (g) the applicant intends to comply with any conditions subject to which the visa is granted; and
- (h) if the last visa (if any) held by the applicant was a transitional (temporary) visa, that visa was not subject to a condition that the holder would not, after entering Australia, be entitled to be granted an entry permit, or a further entry permit, while the holder remained in Australia.